

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
at Elkins**

**VICTORIA SHREVE,
Plaintiff,**

v.

CIVIL ACTION NO. 2:05-CV-51

**MICHAEL J. ASTRUE¹, COMMISSIONER
OF THE SOCIAL SECURITY ADMINISTRATION,
Defendant.**

**ORDER DECLINING TO ADOPT THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
AND GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on Plaintiff's Objection to the Magistrate Judge's Report and Recommendation entered in this matter on October 18, 2006. For cause shown, Plaintiff's Objection to the Magistrate Judge's Report and Recommendation is SUSTAINED.

IT IS HEREBY ORDERED that the final administrative decision of the Defendant Commissioner on Plaintiff Victoria Shreve's October 29, 2003 application for Social Security disability benefits is REVERSED as not supported by substantial evidence. This matter is REMANDED to the Commissioner for further administrative proceedings to evaluate Plaintiff Shreve's subjective testimony of pain and limitation under proper legal standards and to determine whether Plaintiff can perform work which exists in significant numbers in the national economy.

¹ On February 12, 2007, Michael J. Astrue became the Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should be substituted, therefore, for former Commissioner Joanne B. Barnhart, as the Defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

Plaintiff's Motion for Summary Judgment should be granted. Defendant's Motion for Summary Judgment should be denied.

The Clerk is DIRECTED to transmit a copy of this ORDER to counsel of record herein. Pursuant to Federal Rules of Civil Procedure 58, the Clerk is DIRECTED to enter Judgment in favor of Plaintiff in this matter.

DONE this 22nd day of August, 2007.


UNITED STATES DISTRICT JUDGE